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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MLL/172477

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 02, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on April 07, 2016, at Racine, Wisconsin.

The issue for determination is whether Petitioner's hardship waiver was correctly denied as untimely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

||

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County.
2. Petitioner filed this appeal to contest the denial of a hardship waiver from a claim made by the State against Petitioner's brother's estate.
3. On January 8, 2016 the Department of Health Services (DHS) mailed Petitioner a notice of a claim against the estate of Petitioner's brother. The notice was accompanied by a notice of hardship waiver

provisions and the waiver provisions noted that a hardship waiver had to be postmarked by February 22, 2016.

4. On March 4, 2015 the DHS received a waiver request from Petitioner.
5. On March 7, 2016 the DHS sent Petitioner a letter denying her request for a hardship waiver as the request was untimely.

### **DISCUSSION**

The estate waiver of claim process is governed by the Wisconsin Administrative Code, DHS Chapter 108. In relevant part the Code states:

(d) *Application and review process.* 1. A waiver applicant shall mail his or her application for a waiver in writing to the department within 45 days after the date the department mailed its claim or affidavit pursuant to s. 49.496 or 49.849, Stats., or its notice under par. (c), whichever is later. The application shall include the following information:

a. The relationship of the waiver applicant to the decedent and copies of documents establishing that relationship; and

b. The criterion under par. (b) 2. a., b., or c. which is the basis for the application and documentation supporting the waiver applicant's position.

2. The department shall review each application and issue a written decision within 90 days after the application was received by the department. The department shall consider all information received within 60 days following receipt of the application. The department's decision shall be based on information received within that time-period. The department's written decision shall include information regarding the waiver applicant's right to a hearing under par. (e).

*Wis. Adm. Code, §DHS 108.02(12)(d).*

Petitioner had assistance here from her nephew. He testified that he submitted the hardship waiver on February 12, 2016 and, having had no response from the Department, called on or about February 26, 2016 and learned that the request had not been received so resubmitted it. No copy of the original paperwork was kept by Petitioner or her nephew. In reviewing the documentation submitted with the March 4, 2016 request, it contains a bank statement dated February 18, 2016 so that submission could not have been the same as any earlier submission. In the end, there is just not enough to demonstrate precisely what was sent where or when for me to conclude that a timely hardship waiver was submitted.

### **CONCLUSIONS OF LAW**

That Petitioner's hardship waiver request was correctly denied as there is a lack of evidence to demonstrate that the request was not submitted to the DHS within time limits set by the Wisconsin Administrative Code.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

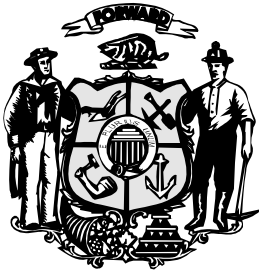
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of May, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 20, 2016.

Division of Health Care Access and Accountability